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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,333	10/14/2003	Scott T. Moore	10000-231	1212

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EXAMINER	
SNOW, BRUCE EDWARD	
ART UNIT	**PAPER NUMBER**
3738	

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/685,333	MOORE, SCOTT T.	
	Examiner	Art Unit	
	Bruce E. Snow	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12 and 14-40* is/are pending in the application.

4a) Of the above claim(s) *29 and 30* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12,14-28 and 31-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *6/27/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 6/27/05 have been fully considered.

Regarding the objection to the specification, applicant merely moved the unsupported language to another claim; this does not overcome the objection.

Regarding the rejection of claim 15 under 35 U.S.C. 112, first paragraph, the specification (page 10, line 9-14) does not positively teach the stent held tightly between the distal tip and pusher member.

Regarding the rejection under 35 U.S.C. 102(b) as being anticipated by Ravenscroft (5,702,418), applicant argues, *"[t]o the contrary, element 17, which is the structure that is characterized by the Examiner as the "flexible portion", is clearly disposed inside the stent at all times prior to deployment of the stent (see Fig.1). Although element 17 appears to be located proximal of the stent in some of the figures (see, e.g. Figs 4 and 5), this is only after deployment of the stent has been initiated or completed."* The Examiner fails to find any language which limits the delivery system to a state of delivery which excludes the states shown in figures 4 and 5. Additionally, referring to figure 1 of Ravenscroft, there is always a second tubular portion 17 which is substantially shorter in length that the first tubular portion. Further note that the rejection includes elements 16 and 17 as the second tubular portion. The Examiner reminds applicant to point out support for any amendments made to the disclosure which includes the claims; see MPEP714.02 and 2163.06.

Regarding the rejection in view Wilson, applicant has amended the independent claims to require the second tubular portion is substantially shorter in length that the first

tubular portion; this limitation fails to overcome the reference because the language only requires "portions". The Examiner believes that giving the claim language its broadest meaning, one can select a portion of the second tubular element to be substantially shorter in length that a portion of the first tubular element.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "the remaining section" (previously the limitation of claim 24 now added to claim 31).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-12, 14-28, 31-40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 15, the stent held tightly between the distal tip and pusher member is not taught in the specification and clearly not shown in the drawings.

Regarding claims 1, 15, 24, 35, 36, the first tubular portion being substantially shorter in length than the first tubular portion is new matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in-
> (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
> (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-7, 11, 24-28, 31, 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Ravenscroft (5,702,418).

Ravenscroft teaches a stent delivery system comprising:

a pusher assembly that includes first tubular portion including element 15 having a second diameter; a second tubular portion beginning with element 16 and including a flexible portion 17 which has a greater degree of flexibility than said first tubular portion and having a first diameter, the second diameter is greater than the first diameter; said second tubular portion further comprising a stent loading portion and a pusher members 23 wherein the proximal member is fully capable of engaging a proximal end of a stent (claim 1).

Regarding at least claim 3, see figure 3. The pusher member has a diameter equal to or greater than the stent at 20b.

Regarding at least claim 11, distal tip, see element 13.

See introducer 24.

Regarding the "second member" is see element 16.

Regarding claim 27, the proximal surface of the pusher member would inherently open any kinks upon removal.

Regarding claim 31, the resiliency changes as a function of length and position.

All other claim limitations are self-evident.

Claims 1-12, 14-28, 31-32-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Wilson et al (6,425,898).

Wilson teaches a stent delivery system comprising:

a pusher assembly that includes first tubular portion 16 and a second tubular portion 18 which has a greater degree of flexibility than said first tubular portion (see at least 5:15-44; pusher member 21, 22; outer sheath 40; second member 17.

Regarding the second tubular member portion having a smaller diameter, see figure 5, showing the first tubular portion 16 which includes a larger diameter portion between reference numerals 5 and 16.

Regarding the radiopaque filler in the distal tip, see element 74.

Regarding claim 15, the stent is tightly held between the distal tip and face of the pusher member expanding against the sheath.

All other claim limitations are self-evident.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12, 32, 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ravenscroft (5,702,418).

Ravenscroft teaches a stent delivery system as described above, however, fails to teach the pusher member is made of a polymer. It would have been obvious to one having ordinary skill in the art to have made the pusher member of Ravenscroft from a polymer because they are well known biocompatibility, moldability, and low friction property.

Claims 14, 34, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ravenscroft (5,702,418) in view of Ravenscroft (6,656,212).

Ravenscroft teaches a stent delivery system as described above. However, Ravenscroft fail to teach the wherein the distal tip includes a radiopaque filler material. Ravenscroft '212 teaches the tip includes a radiopaque filler. It would have been obvious to one having ordinary skill in the art to have substituted the pusher member material which is includes a radiopaque material as taught by Ravenscroft '212 for the

tip of Ravenscroft '418 such that aids in positioning the stent within the target lesion during deployment within a vessel.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E. Snow whose telephone number is (571) 272-4759. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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BRUCE SNOW
PRIMARY EXAMINER